

MTC 511 TRAFFIC

Request for Proposal Appendix H

Contract Volume I Terms and Conditions

October 14, 2009

**METROPOLITAN TRANSPORTATION COMMISSION
101 - 8TH STREET
OAKLAND, CA 94607**

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GLOSSARY OF TERMS

Approved Project Schedule:	The detailed schedule, approved by MTC, which Contractor has agreed to adhere to in the performance of the Contract, pursuant to Article 2.2 (Attachment 3).
Change Notice:	A written notice issued to the Contractor by MTC pursuant to Article 11.2 specifying a proposed change to the Contract.
Change Order:	An order executed by MTC and Contractor pursuant to Article 11.6 amending the Contract.
Contract Price:	The maximum amount payable to Contractor under the Contract for performance of the Work, as specified in Article 3.4.
Contractor:	<i>TBD</i>
DOT:	The United States Department of Transportation, which is the agency providing the funding for the Project.
Contract:	The signed agreement between MTC and the Contractor to operate, maintain, and enhance 511, dated July 1, 2009, comprised of <i>Volume I</i> , Terms and Conditions, and <i>Volume II</i> , Scope of Work and Functional Requirements, and their attachments, as amended by approved Change Orders and Task Orders.
Major Subcontractor:	A Subcontractor with a contract in an amount equal to or greater than \$100,000.
MTC:	The Metropolitan Transportation Commission, formed pursuant to California Government Code Sections 66500 <i>et seq.</i> , the public agency responsible for planning the transportation network for the San Francisco Bay Area and for coordination among transportation services in its region.
MTC Project Manager:	MTC's duly designated representative for management of the Work under this Contract.
MTC Software:	511 Software developed by the Contractor or former 511 Traffic Contractors specifically for 511 and funded through this Contract or former 511 Traffic Contracts, not including software owned by the Contractor or a third party and customized for 511.
Project:	All devices, equipment, materials, software, facilities and services, whether physical or conceptual in nature, involved in performing the Work required by the Contract

Proposal:	The Proposal or Best and Final Offer submitted by Contractor in response to the RFP.
Proprietary Work Products:	Work Products, as defined in Article 5.1.1, owned by Contractor or a third party and developed prior to or separate from the Contract.
Principal-in-Charge:	The individual authorized by Contractor to sign the Contract and commit the Contractor to the Work required by the Contract.
Project Manager:	Contractor's duly designated representative for management of the Work.
Restrictive Software:	Custom-designed software; modified versions of available software; specialized software no longer commercially available or for which interfaces do not exist. Excludes software meeting ISO or National ITS standards and commercially available software.
Scope of Work:	The sequential description of the Work to be performed by Contractor, appearing in <i>Volume II</i> of the Contract, in accordance with the Functional Requirements of the Project, as documented in <i>Volume II</i> , Scope of Work and Functional Requirements, Appendix ____ of the Contract.
Site:	Location(s) at which Contractor operates the traveler information service.
Task Order:	An agreement between MTC and Contractor defining the work scope, schedule and budget for enhancements to the 511 System, added to the Contract in accordance with Article 11.10.
Term of Contract:	July 1, 2009 through June 30, 2014, or as revised by Change Order, unless earlier terminated according to the provisions in Article 14.
Work:	All of the Contractor's efforts necessary to complete all of its obligations under the Contract.
511/511 System:	For purposes of this Contract, the San Francisco Bay Area's real-time multi-modal traveler information system.
511 Software:	All software, regardless of its ownership, furnished by the Contractor to implement, operate, maintain or enhance the traveler information service.

511 TRAFFIC CONTRACT

This Contract is made and entered into as of July 1, 2009 (“Effective Date”), by and between the Metropolitan Transportation Commission, a regional transportation planning agency established pursuant to California Government Code § 66500 *et seq.*, (hereinafter called “MTC”), and _____, (hereinafter, “Contractor”), with reference to the following facts:

RECITALS

A. MTC desires to contract with Contractor, selected as a result of a competitive selection process, to operate, maintain and further develop the 511 Traffic, Real-Time Transit and Phone Systems, which are part of the greater San Francisco Bay Area 511 Traveler Information Program; and

B. MTC has authority to enter into contracts pursuant to California Government Code § 66506(c), and finds that the services required under the Contract cannot reasonably be performed by MTC employees; and

C. Federal funds from DOT will be the primary source of funding for the Contract, which includes federally-required third party contract provisions associated with the use of federal funds; and

D. The parties both intend for Contractor to assume primary responsibility with respect to operation, maintenance and further development of the Work described herein.

NOW, THEREFORE, in consideration of the sums to be paid to Contractor by MTC, the foregoing premises and the covenants and agreements set forth herein, the parties hereby agree as follows:

1. SCOPE OF WORK

1.1 CONTRACT

1.1.1 Documents Comprising Contract

The 511 Contract consists of the following documents organized as provided below, as modified by Change Orders and Task Orders pursuant to Article 11:

- a. *Volume I, Terms and Conditions*;
- b. Attachment 1, Designated Representatives (see Articles 1.2.2, 1.3.2, and 1.3.3);
- c. Attachment 2, Key Personnel Assignments, (see Article 1.3.4);
- d. Attachment 3, Project Schedule (see Article 2.2);
- e. Attachment 4, Payment Schedule for Project Elements I – IV (see Article 3.1);
- f. Attachment 5, Subcontractors (see Article 9);
- g. Attachment 6, Local Agency Proposer/Bidder DBE (Consultant Contracts) Information;
- h. *Volume II, Scope of Work and Functional Requirements*
- i. Contractor's Proposal

1.1.2 Contract Interpretation

In the event of ambiguity or lack of details in a particular provision of the Contract, the Contract shall be interpreted according to the following documents, in the following order of precedence:

- 1. Change Orders and Task Orders executed after Contract;
- 2. Contract;
- 3. Contractor's Proposal.

The documents comprising the Contract are intended to be complementary, and to fully describe and provide for a complete Project. The parties agree that an interpretation that supports such intent shall be given precedence over one that does not. If the ambiguity allows more than one possible interpretation supporting the intent of a complete product and the references above do not resolve the ambiguity, the MTC Project Manager shall make a reasonable determination of the appropriate interpretation.

Omission from the Contract of details of the Work that do not substantively alter the functional requirements or the mis-description of details generally acknowledged to be customary and/or necessary to carry out the Work or which Contractor knew or reasonably should have known to be included in the Work shall not relieve Contractor from performing such omitted or mis-described details, and it shall be performed as if fully and correctly set forth and described in the Contract, without entitlement to a Change Order hereunder.

Where appropriate, references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation

referred to; the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation”; unless otherwise indicated; references to articles or tasks are to this Contract and include all sub-articles or subtasks under the article or section referenced; words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings; references to “persons” include their respective permitted successors and assigns and, in the case of “governmental persons,” persons succeeding to their respective functions and capacities; and words of any gender used herein shall include the other gender where appropriate. Unless otherwise specified, lists contained in the Contract describing or defining the Work shall not be deemed all-inclusive.

1.2 MTC’S AUTHORITY

1.2.1 MTC’s Right to Site Access

MTC will have the right to full access to the the Traveler Information Center and all other equipment locations (i.e. hosting facilities) at all times during the performance of this Contract and any extensions thereof.

1.2.2 Authority of Project Manager

The MTC Project Manager (identified in Attachment 1 to these Terms and Conditions) has the responsibility, under authority from MTC, to administer this Contract so that its completion is accomplished in accordance with contractual requirements. Should the performance of the Contractor or the quality of Contractor’s work or materials furnished not meet the standards specified in the Contract, the MTC Project Manager has the authority to take any action or require any measures that are available to MTC under this Contract to ensure compliance with contractual requirements on behalf of MTC, unless the Contract specifically requires such action or measures to be taken by another individual. The MTC Executive Director will notify Contractor of any change in the designation of the MTC Project Manager by MTC.

1.2.3 Publicity and Public Presentations

MTC must approve all MTC-related copy in writing prior to publication by the Contractor or its subcontractors. Contractor agrees not to allow MTC-related copy to be published in Contractor’s or its subcontractor’s advertisements or public relations programs without prior written approval from the MTC Project Manager; except that Contractor and its subcontractors may include, without MTC prior approval, descriptions of 511, their respective roles in the Project, and related contact information in resumes,

proposals, qualification packages, project data sheets, and similar items used within the industry to propose and qualify for similar work. Contractor agrees that published information on MTC or 511 shall be factual only and in no way imply that MTC endorses Contractor's firm, service, or product.

In addition, during the life of the Contract, MTC must approve in advance and in writing any public presentations made by Contractor or its subcontractors on 511, including participation in conferences, trade fairs, and studies.

1.3 CONTRACTOR'S OBLIGATIONS

1.3.1 General Description

Contractor shall perform all services, provide all materials, equipment, and software, and undertake all efforts necessary or appropriate (excluding only those efforts that the Contract specifies will be provided or undertaken by MTC or other persons) to operate, maintain and further develop the Project to achieve the full extent of function required by the Contract, in accordance with the terms and conditions set forth in the Contract.

1.3.2 Principal-in-Charge

Contractor has designated an individual as Principal-in-Charge, identified in Attachment 1, who is authorized to speak for and make commitments on behalf of Contractor.

1.3.3 Project Manager

Contractor has designated a Project Manager, identified in Attachment 1, who will act as the primary point of contact in all matters on behalf of Contractor. The Project Manager will assign other individuals as contacts with regard to specific functional areas of the Work, subject to the approval of MTC.

1.3.4 Key Personnel

Job positions or categories deemed by MTC to be essential to the successful performance of the Work, the individuals filling those positions ("Key Personnel"), and the estimated hours to be supplied by each by fiscal year are identified in Attachment 2. Key Personnel shall be required to work at the level of effort indicated in the Contractor's final response to the 511 Traffic Contractor Request for Proposal. A change in the number of hours provided to the Project by such personnel in excess of ten percent (10%) shall require the prior written approval of the MTC Project Manager. CONSULTANT shall maintain records documenting compliance with this Article, which shall be subject

to the audit requirements of Article 13.2.3. Approved Key Personnel shall not be removed from the project without cause or without prior notification and approval of Project Manager. If removal is for cause, the Contractor shall submit justification in writing to the Project Manager within twenty-four (24) hours of the removal. Should MTC determine during the term of the Contract that the Key Personnel list does not include personnel essential to the successful performance of the Work, MTC may require Contractor to add any existing job category to Attachment 2, subject to the Change Order provisions of Article 11.

1.3.5 Maintenance of Records

Contractor shall establish a system to maintain the Contract records and documents described in the Contract that will provide for the integrity of all vital records for the Project. Contractor shall maintain all other records and documents related to this Contract in accordance with good bookkeeping practices.

1.3.6 Restrictions on Advertisements

In addition to the restrictions related to the use of “MTC” or “511” in advertisement or public relations programs (see Article 1.3.3), Contractor agrees that it will not advertise or authorize others to advertise on any data dissemination devices employed on the Project, without the prior written approval of MTC, which approval shall not be unreasonably withheld.

1.4 ITEMS INCLUDED IN THE CONTRACT PRICE

Except for materials, services and efforts otherwise specifically excluded from the Work in the Contract, the cost of all materials, software, equipment, supplies, labor, delivery, services and efforts necessary to perform the Contractor’s obligations under the Contract shall be Contractor’s sole responsibility, and all such costs are included in the Contract Price, subject to the terms of Article 11, Change Orders.

Contractor acknowledges and agrees that, subject only to Contractor’s rights under Article 11, the Contract Price includes (a) the cost of all insurance and bond premiums, home office, job site and other overhead, and profit relating to Contractor’s performance of its obligations under the Contract; (b) performance of each and every portion of the Work (including all costs of all Work provided by Subcontractors); (c) the cost of obtaining all governmental approvals, including permits even if MTC is the appropriate applicant,; and all costs of compliance with and maintenance of such governmental approvals; (d) all risk of inflation, currency risk, interest and other costs of

funds associated with the progress payment schedule for the Work as provided herein; and (e) payment of any taxes, duties, permits and other fees and/or royalties imposed with respect to the Work and any equipment, materials, labor or services included therein.

1.5 CONTRACTOR'S REPRESENTATIONS

1.5.1 Authority to Contract

Contractor represents, warrants and covenants for the benefit of MTC that Contractor is duly organized with all requisite power to own its properties and assets and to carry on its business as now conducted or proposed to be conducted. Contractor further represents, warrants and covenants for the benefit of MTC that the execution, delivery and performance of this Contract has been duly authorized by all necessary actions of Contractor and of Contractor's members and will not result in a breach of or a default under Contractor's organizational documents or any indenture or loan or credit agreement or other material agreement or instrument to which Contractor or any member of Contractor is a party or by which Contractor's properties and assets may be bound or affected. This Contract constitutes the legal, valid and binding obligation of Contractor, enforceable in accordance with its terms.

1.5.2 Contractor's Review of Contract

By submitting a Proposal for the Project and by executing this Contract, the Contractor represents that it has carefully reviewed and understands all of the requirements of the Contract, and has determined that it is fully able to conduct, perform and complete the requirements of the Contract within the times required, within the Contract Price, and on the terms and conditions stated in the Contract.

1.5.3 Capabilities and Qualifications of Contractor and Contractor Personnel

Contractor has, and throughout the term of this Contract shall maintain, all required authority, professional ability, skills, capacity, financial resources, and has available or will obtain the necessary equipment, materials, tools and facilities, to perform its obligations hereunder in accordance with the requirements contained in the Contract. All personnel performing work under this Contract will have the necessary credentials and expertise and shall otherwise be fully qualified to perform the Work to which they are assigned.

1.6 GOVERNMENTAL RULES AND APPROVALS

Contractor acknowledges and agrees that it is responsible for familiarizing itself with the requirements of any and all applicable governmental rules and regulations pertaining to its performance of Work under this Contract and for complying with the foregoing at its sole cost and expense and without any increases in the Contract Price or any extensions of milestones in the Approved Project Schedule on account of such compliance (other than those implemented through the Change Order procedure described in Article 11), regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the Contract.

1.7 NOTICES

Any notices provided for in this Contract shall be mailed or personally delivered to the individuals listed in Attachment 1, as they are amended by the parties by written notice.

1.8 COMPLIANCE WITH COOPERATIVE AGREEMENTS

Contractor shall comply with all applicable terms of the following Cooperative Agreements between MTC and the California Department of Transportation: District Agreement No. 4-1949-C and No. 4-1949-A1, 511 ETC Reader Deployment, and District Agreement No. 4-1965-C and No. 4-1965-A1, 511 Operations Center, which are hereby incorporated by this reference as though set forth in full.

2. TIME PROVISIONS AND NOTICES TO PROCEED

2.1 TIME IS OF THE ESSENCE

Time is of the essence in the performance of the Work under this Contract, subject to the provisions of Articles 10.1 (Force Majeure) and 10.2 (MTC-caused delays).

2.2 APPROVED PROJECT SCHEDULE

The first Approved Project Schedule (Attachment 3) is the agreed-upon Five-Year schedule for each Project Element and task, including the projected start and end dates. The Approved Project Schedule shall be re-submitted with each monthly progress report and shall include any proposed revisions for MTC approval. Upon written approval by MTC, the revised Approved Project Schedule shall become part of the Contract (without a Change Order), and the basis for Contractor's scheduling of its Work under the Contract.

Submission of revisions to the Approved Project Schedule shall not release or relieve the Contractor from full responsibility for completing the Work within the time set forth in the previously Approved Project Schedule, until the revisions are approved by MTC in writing.

Any perceived impacts to the Approved Project Schedule that come to Contractor's attention during a month and before the monthly schedule update is due shall be brought to MTC's attention within five (5) days after Contractor learns of the impact.

2.3 CONTRACT START AND COMPLETION DATE

The Start Date for the Contract is July 1, 2009. The Project Completion Date is June 30, 2014, unless earlier terminated pursuant to Article 14 and subject to any changes implemented under Article 11. Such Project Completion Date may be extended, by mutual consent of the parties and based upon written agreement as to contract terms, up to five years in increments of MTC's choosing, as provided in the Project RFP.

2.4 FAILURE TO COMPLY WITH SCHEDULE

Failure on the part of Contractor to reasonably adhere to the Approved Project Schedule is a material breach of this Agreement. If at any time the Contractor fails to complete any activity by the completion date in the Approved Project Schedule by thirty (30) days or more, and MTC has denied a request on the part of the Contractor for an

extension of such completion date, Contractor may be required by MTC to submit to the MTC Project Manager a plan for returning to compliance with the Approved Project Schedule. MTC's approval of Contractor's plan for compliance with the Approved Project Schedule shall not operate as a waiver of its rights nor shall it deprive MTC of its rights under any other provisions of the Contract.

Under no circumstances, during the performance of the Work, is either party responsible for any delay (or resulting damages) caused by or arising from the actions of the other party, its employees, agents, officers or subcontractors.

2.5 NOTICE TO PROCEED

Work performed under *Volume II*, Scope of Work and Functional Requirements, Project Element V, Emergency Response, must be authorized in advance by MTC. Depending on the nature of the emergency, initial authorization may be communicated by telephone or email, but must be followed up within five (5) working days by a written Notice to Proceed (NTP), signed by the MTC Project Manager or designee and specifying the work to be performed, its proposed schedule, and the maximum amount available. No Work under Project Element V shall begin prior to authorization by MTC. Payment for Work under Project Element V shall be based on the written NTP covering the Work.

2.6 COMPUTATION OF PERIODS

References to "days" contained in the Contract shall mean business days, defined as days in which MTC is officially open for business, unless otherwise specified. If any completion date in the Approved Project Schedule falls on a non-business day, such completion date shall extend to the next succeeding day that is a business day.

3. PAYMENT

3.1 LUMP SUM PAYMENTS FOR PROJECT ELEMENTS I - IV

Contractor shall be compensated for Work performed under Project Elements I – IV with lump sum payments due upon satisfactory receipt of specified deliverables or attainment of project milestones, as defined in *Volume II*, Scope of Work and Functional Requirements, consistent with the Functional Requirements set forth in *Volume II*, Appendix _____. Payment amounts are set forth in Attachment 4, Payment Schedule for Project Elements I – IV. The specified lump sum amounts are full compensation for the work, including, without limitation, all applicable surcharges such as taxes, insurance, and fringe benefits, as well as indirect costs, overhead and profit allowance, subcontractor costs, travel, materials and supplies.

3.1.1 Key Performance Indicators and Payment Reductions

Lump sum payments for Project Elements I – IV are subject to reduction based on whether the Contractor meets the system performance standards set forth in *Volume II*, Scope of Work and Functional Requirements, Appendix ___, Key Performance Indicators and Payment Deductions. The payment deductions are based on the formula set forth in Appendix ___, which takes into account System Availability, System Accuracy, and Voice Response Quality. The formula will be calculated on a monthly basis. Each component of the payment deduction calculation will have a maximum amount that can be deducted, as set forth in Appendix ___. At the request of MTC, Contractor shall be required to submit documentation to substantiate the Lump Sum Payment and Payment Deduction Calculations.

3.1.2 Payment for Renewable Services

MTC has identified tasks called “renewable services” which may be removed from annual work plans after the first year of the Project. Amounts specified for payment under any non-renewed task shall not be due Contractor unless re-allocated by Change Order.

Nothing in this designation is intended to limit MTC’s right to terminate for convenience, as provided in Article 14.1.

3.2 PAYMENT FOR PROJECT ELEMENT V, EMERGENCIES

Payment for Work performed under *Volume II*, Scope of Work and Functional Requirements, Project Element V, shall be on a time and materials basis, based on the hourly rates set forth in Attachment 2, Key Personnel Assignments. To be eligible for payment, Work shall have been authorized by an NTP, as provided in Article 2.5, and shall not exceed the maximum amount specified in the NTP, unless authorized in writing by the MTC Project Manager. The invoicing procedures in Article 3.6.2 shall apply.

As time is of the essence for emergency work, MTC will issue an NTP to begin the Work for Project Element V and fund the work via the change order process set forth in Article 11, Change Orders.

3.3 PAYMENT FOR PROJECT ELEMENT VI

Payment for Task Orders issued pursuant to Article 11.10 for Work performed under *Volume II*, Scope of Work, Project Element VI, shall be based on the terms of the Task Order and its accompanying Change Order, where applicable, and may be deliverables or milestone-based, or time and materials. For time and materials Task Orders, the hourly rates in Attachment 2, Key Personnel, shall apply. Task Order payments may be adjusted as provided in the incentive/disincentive provisions of each Task Order.

The invoicing procedures in Article 3.6 shall apply.

The maximum amount available for Task Orders is \$_____.

3.3.1 Withholding from Project Element VI Payments

MTC shall withhold, as a retainage, 5% of the value of payment due for Enhancements added by Task Order until such Work is completed and approved or approved with comment, pursuant to *Volume II*, Appendix __, Project Deliverables and Approval Process. In the case of time and materials Task Orders under Project Element VI, such retention may be withheld until after an audit of costs conducted pursuant to Article 13.2.3, provided however that Contractor shall be entitled to the release of retention no later than one year after Work is completed and accepted.

3.4 CONTRACT PRICE

The Contract Price is \$_____. Subject only to duly executed Change Orders, it is expressly understood and agreed that in no event will total

compensation (including reimbursement for expenses, in the case of time and materials Change Orders) exceed the Contract Price.

3.5 PROJECT REVENUES

In the event Contractor generates revenue as defined in Article 6.5 of this *Volume I* and in Project Element I of *Volume II*, Scope of Work and Functional Requirements, the MTC portion of such revenue shall be used at MTC's sole discretion.

3.6 INVOICES

Contractor shall invoice MTC monthly. Payment will be made within 30 days after receipt of properly prepared invoices. Invoices will be dated, numbered in serial order, and signed by Contractor. Invoices shall be mailed to: Attention: Accounting Section, MTC, Joseph P. Bort MetroCenter, 101 8th Street, Oakland, CA 94607-4700.

3.6.1 Invoices for Lump-Sum Payment Work

Invoices for Work performed under *Volume II*, Scope of Work and Functional Requirements, Project Elements I – IV, or for deliverables or milestone-based payments for Work performed under Project Elements VI shall specify the deliverable or milestone for which payment is due the amount due, and in the case of Work under Project Element VI, the Task Order (and Change Order, if applicable) number. Invoices for Work performed under Project Element VI may be submitted together with the invoice for Project Elements I - IV, but each Task Order shall have its own separate page. Amounts due as monthly lump sum fees shall be due in arrears.

3.6.2 Invoices for Time and Materials Work

Invoices for Work performed under *Volume II*, Project Element V or VI on a time and materials payment basis shall be due in arrears and shall reference the Task Order number, the Change Order Number (if applicable), hours worked and hourly rate by project staff, the amount requested, the cumulative amounts previously billed under that Task Order, budget, and remaining budget. Such an invoice should have its own separate page.

3.7 PAYMENT FOR PROJECT ELEMENT VII

TBD

4. PERFORMANCE BOND AND INSURANCE

4.1 LETTER OF CREDIT

Contractor, concurrently with the execution and delivery of this Contract, has provided additional security for the performance of its obligations hereunder through a letter of credit issued by a bank whose long-term debt is rated "A" or better by a Rating Agency (the "Letter of Credit"), in the stated amount of \$5,000,000, with a term of one (1) year. The Letter of Credit shall be annually renewed, extended or replaced so that it remains in effect continuously throughout the terms of the Contract. MTC shall be authorized under the Letter of Credit to make one or more sight drawings thereon upon certification to the issuing bank that an event of default by the Contractor hereunder has occurred and not been cured in accordance with the Contract. The Letter of Credit shall also permit a drawing thereon in the full stated amount thereof in the event that any required renewal, extension or replacement thereof is not made at least 30 days prior to its expiration. The Letter of Credit shall serve as additional security for the performance of the Contractor's obligations, and in no event shall the existence of the Letter of Credit of the stated amount thereof be construed to cap, liquidate or otherwise modify or limit the amount of damages payable by the Contractor hereunder upon the occurrence of a Contractor event of default.

4.2 INSURANCE - GENERAL

During the performance of services hereunder and for the duration of the Contract, Contractor shall, at its own expense, carry policies of insurance as described in Article 4.3 below. Insurance must be obtained from companies authorized to do business in the State of California that carry an A.M. Best rating of A- X or better. Prior to beginning work, Contractor shall furnish certificates of insurance issued by an authorized underwriter of the insurer and copies of endorsements verifying the required coverages. The certificates shall contain a provision for forty-five (45) days prior written notice to MTC of cancellation, reduction, or any material change in coverage. Renewal certificates shall be provided to MTC in advance of the expiration of the required coverages. If Contractor is self-insured for any of the specified coverages, documentation of the adequacy and stability of such self-insurance shall be substituted, in accordance with Article 4.7.

4.3 INSURANCE REQUIRED

4.3.1 Commercial General Liability Insurance

Contractor shall provide Commercial General Liability insurance for Bodily Injury and Property Damage liability, covering the operations of Contractor and Contractor officers, agents, employee and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000 applying separately to this project, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Expense for Indemnatee's defense costs shall be outside of policy limits and such policy shall be issued on a Duty to Defend Primary Occurrence Form.

The following endorsements must be obtained for the Commercial General Liability coverages required herein.

1. Inclusion of MTC, FHWA, CHP, Caltrans, and their directors, commissioners, officers, and employees as additional insureds with respect to services or operations under this Contract to include coverage for products and completed operations using endorsement form #CG2010 11/85 or comparable wording.
2. Stipulation that policy is primary insurance and no insurance of the parties listed in (1) will be called upon to contribute to loss, claims, or liability arising directly or indirectly from CONSULTANT's operations.
3. Cross liability clause providing that insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurance company's liability.

4.3.2 Automobile Liability Insurance

Contractor shall provide Business Automobile insurance for all automobiles owned, used or maintained by Contractor and Contractors officers, agents and employees, including but not limited to owned, leased, non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence, with endorsements in Article 4.3.1(1) and (3) above.

4.3.3 Workers' Compensation and Employer's Liability Insurance

Contractor shall provide Workers' Compensation insurance in the amount required by the applicable laws, and Employer's Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per occurrence, and any and all other coverage of Contractor's employees as may be required by applicable law. Such policy

shall contain a Waiver of Subrogation endorsement in favor of MTC. Such Workers Compensation & Employers Liability may be waived, if and only for as long as contractor is a sole proprietor with no employees.

4.3.4 Professional Liability Insurance

Contractor shall provide Errors & Omissions or Professional Liability Insurance (if applicable) in an amount no less than \$5,000,000. If such policy is written on a "Claims-Made" (rather than an "occurrence") basis, contractor/consultant agrees to maintain continuous coverage in effect from the date of the commencement of services to at least five (5) years beyond the termination or completion of services or until expiration of any applicable statute of limitations, whichever is longer. The policy shall provide coverage for all work performed by the Contractor and any work performed or conducted by any subcontractor working for or performing services on behalf of the Contractor. No contract or agreement between the Contractor and any subcontractor shall relieve the Contractor of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by the Contractor and any subcontractor working on behalf of the Contractor on the project.

4.3.5 Umbrella or Excess Liability Coverage

Contractor shall provide Umbrella or Excess Liability Coverage of at least \$10,000,000 for General Liability, Automobile Liability and Employer's liability. The endorsements in Article 4.3.1(1) and (3) are applicable to the Automobile Liability umbrella coverages required in this Article 4.3.5.

4.3.6 Property Insurance.

Contractor, at Contractor's expense, shall obtain a policy or policies of insurance covering loss or damage, including loss of use, to any and all MTC real, personal and intellectual property, notwithstanding such property being in the care, custody or control of the Contractor, in an amount equal to the full replacement value thereof, as same may exist from time to time. Coverage shall be secured for the life of the project, within the definition, "All Risk," or "Special Form," and shall include coverage for installation and testing of any equipment that is to be installed or become part of any real property. If such insurance coverage has a deductible clause, the Contractor shall be also liable for the deductible.

4.4 RELATIONSHIP TO OTHER CONTRACT PROVISIONS

The preceding requirements as to the types and limits of insurance coverage to be maintained by Contractor and any approval of said insurance by MTC are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by contractor pursuant to this Contract, including but not limited to the provisions concerning indemnification.

4.5 SUBCONTRACTORS' INSURANCE

Contractor shall require each of its Major Subcontractors to provide the aforementioned coverages, unless an exception to coverage levels or types of coverage is granted in writing by the MTC Project Manager. Any exception so granted shall specify the Major Subcontractor by name, along with a brief explanation for the waiver.

4.6 CONTRACTOR'S RESPONSIBILITY

Contractor is responsible for tracking insurance coverages for itself and its subcontractors and ensuring that coverages remain in force throughout the duration of the Contract or as required by the Contract. MTC reserves the right to delay payments to Contractor in the event of material noncompliance with the insurance requirements, with no interest accruing on such delayed payments.

4.7 SELF INSURANCE

Subject to written approval by MTC, Contractor or its Subcontractors may self-insure a portion or all of the required coverages. Should the Contractor or any Subcontractor self-insure any of the required coverages, a letter signed by the senior officer of the risk management department, detailing the limits and nature of each self-insured retention must be provided concurrently with the submission of insurance certificates (or, if entirely self-insured, after issuance of Notice of Award and prior to beginning Work). As long as such self-insurance is in effect during the term of the Contract, an updated letter meeting the same requirements must be submitted to MTC annually.

4.8 DEDUCTIBLES AND SELF-INSURED RETENTION

Any deductible or self insured retention of \$25,000 or greater shall be subject to the approval of MTC. Any other special coverage restrictive devices such as "coinsurance" must be declared and approved by the Project Manager prior to job commencement. Such approval will not unreasonably withheld.

5. RIGHTS IN DATA

5.1 WORK PRODUCTS, EXCLUDING SOFTWARE

5.1.1 Definition

The term “Work Products” as used in this Article 5.1 means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract, (excluding computer software, in both object and source code form; software documentation; and digital maps and other digital databases, all of which are covered in Article 5.2 herein). Examples of Work Products include, but are not limited to: specifications, drawings, manuals and training materials, technical reports and memoranda, system architecture, electronic data, archived 511 data output, and related information. “Work Products” does not include financial, administrative, and cost and pricing information incidental to the Work or confidential information as defined in Article 5.3.

5.1.2 Ownership of Work Products

Except as provided in Article 5.1.4 below, all Work Products prepared or assembled for MTC and/or furnished to MTC by Contractor or any of its subcontractors pursuant to this Contract shall be the property of and owned by MTC, and copies shall be delivered to MTC promptly upon completion of the Work; upon earlier termination of the Contract; or at any time during the term of this Contract at the request of MTC, whichever is earliest. Contractor hereby assigns to MTC ownership of all right, title and interest in and to such Work Products, including ownership of the entire copyright in the Work Products, and agrees to execute all papers necessary for MTC to perfect its ownership of the entire copyright in the Work Products. Proprietary information used to create Work Products is not included under this subarticle.

5.1.3 Restrictions on Use of MTC-Owned Work Products

Except with respect to dissemination or use pursuant to the Contract, neither Contractor nor its Subcontractors shall use or disseminate any MTC Work Products without the prior written approval of MTC. A draft Work Product is considered by MTC to be confidential information unless it is either incorporated into a Work Product that is released by MTC as a public document or in another form. Neither Contractor nor its Subcontractors shall use, publish, or base other work on such draft Work Products, without the prior written consent of MTC.

5.1.4 Grant of License to Proprietary Work Products

Contractor hereby grants to MTC a license to any Proprietary Work Product furnished by Contractor or a subcontractor(s). Work Products not identified as a Proprietary Work Product in the Proposal shall be presumed to fall within the ownership provisions of Article 5.1.2.

Contractor's grant of license hereunder is a royalty-free, assignable license for MTC to use, copy, publish or disclose such Proprietary Work Product exclusively for the benefit and operation of the Project, effective upon payment of all amounts due Contractor (less applicable retentions) for such Proprietary Work Product up to the date of acceptance of such Proprietary Work Product by MTC or, if such Proprietary Work Product is not subject to MTC's review and approval, up to the date of integration into the Project. The duration of the license shall be as specified in Article 5.2.6.

5.2 SOFTWARE REQUIREMENTS

5.2.1 511 Software

511 Software is all software, regardless of its ownership, furnished by the Contractor to implement, operate, maintain or enhance the traveler information service. Except as set forth in Article 5.2.3, ownership by MTC of 511 Software is not a requirement.

5.2.2 Restrictive Software

"Restrictive Software" is custom-designed software; modified versions of available software; or specialized software no longer commercially available or for which interfaces (a) do not exist, (b) will not be provided as part of the Work, or (c) cannot be readily developed by a qualified third party. Software meeting ISO or National ITS standards or commercially available software is required if available.

5.2.3 MTC Software

MTC Software is 511 Software developed by the Contractor or former 511 Traffic Contractors specifically for 511 and funded through this Contract or former 511 Traffic Contracts, not including software owned by the Contractor or a third party and customized for 511. MTC Software includes 511 Software in use in MTC's 511 system on the Effective Date of the Contract.

MTC shall own MTC Software. Contractor hereby assigns and/or agrees to assign to MTC ownership of all right, title and interest in and to such MTC Software, including

ownership of the entire copyright in such MTC Software, and agrees to execute all papers necessary for MTC to perfect its ownership. Ownership of MTC Software shall mean ownership of the entire copyright to the executable code and documentation (including training materials), compilable source code and source code documentation, and any modifications, revisions, upgrades or derivative works created during the term of this Contract for 511. MTC and Contractor have agreed, in advance of Contract execution, on which 511 Software is MTC Software, and such MTC Software has been identified in the Detailed List of Software required under Article 5.2.8.

5.2.4 Grant of License to MTC Software

MTC hereby grants to Contractor a royalty-free, non-transferable, non-exclusive license, solely in connection with the Project, to use, translate, reproduce, modify, adapt and create derivative works from, and to sublicense to its subcontractors, MTC Software, including source code and source documentation. Any other uses of MTC Software require the prior written approval of MTC. All translations, modifications, adaptations, derivative works or upgrades to MTC Software developed by Contractor under this grant of license shall be owned by and inure to the benefit of MTC, and Contractor assigns and/or agrees to assign to MTC ownership of all right, title, and interest to such translations, modifications, adaptations derivative works or upgrades and to execute all papers necessary for MTC to perfect its ownership. The source code for such translations, modification, adaptation, derivative works or upgrades shall be deposited in the escrow account established pursuant to Article 5.2.5 below, along with the accompanying documentation described therein, or furnished to MTC upon MTC's request, if Contractor does not establish such escrow account for any reason.

5.2.5 Grant of License to Restrictive Software

To the extent Contractor furnishes as 511 Software Restrictive Software owned by Contractor or one of its subcontractors, Contractor grants, and shall require any applicable Subcontractor also to grant, to MTC a royalty-free, non-exclusive license to use, translate, reproduce, modify, adapt and create derivative works from, and to license to third parties for such purposes, all such software, including its source code and source code documentation, for the benefit and operation of the Project. Such license shall be effective upon 80% completion of the Work covering such software and payment of all amounts (less any retentions) due Contractor for such software up to that date, for the duration specified in Article 5.2.6.

Pursuant to this grant of license, Contractor shall make available to MTC, upon such request, the source code and source code documentation for such software, along with a list of all applicable software development tools, i.e., all software required to edit/alter the source code and successfully recompile and operate the software, including operating systems, libraries, tools and utilities, data base structures and code and compilers. Any such development tools that are themselves Restrictive Software must be made available to MTC to the extent necessary for MTC to exercise its rights under this Article 5.2.5.

As additional assurance of Contractor's compliance with this subarticle, Contractor shall place the source code for all such Restrictive Software that has been placed under configuration management and control in a software escrow account, accompanied by detailed source code documentation, including a list of applicable software development tools, as described above. Such escrow account shall be created within thirty (30) days of integration of any Restrictive Software into the Project and updated with respect to all source code in the account within thirty (30) days of further integrations of Restrictive Software or updates that contain substantial revisions to the software then retained in escrow. The cost of maintaining such escrow shall be included in the Contract Price.

MTC agrees to maintain the confidentiality of all software, code and documentation licensed under this Article and to require any agents or third party contractors to whom MTC discloses such software to execute a non-disclosure agreement, the terms of which will be provided in advance to Contractor for review and comment.

The provisions of this subarticle shall apply for the durations specified in Article 5.2.7 regarding particular functional requirements.

5.2.6 Commercial Software

Contractor shall secure and administer all licenses or sublicenses for standardized commercially available software used for the Project and shall provide to MTC copies of such licenses, along with any documentation provided by the third party suppliers. Contractor shall not be required to furnish to MTC the source code to third party software, the right to make copies (other than back-up or archival copies), the right to modify, or the right to disclose the software to third party contractors. However, Contractor shall secure licenses to commercial software that authorize MTC to allow third parties to use such software in connection with the Project.

At least six months prior to the end of the Contract term, Contractor shall begin efforts either to assign such licenses or sublicenses to MTC or MTC's designee or, if such assignments are not practicable, to provide MTC with sufficient information to enable it to secure the licenses or sublicenses necessary for the continued operation of the Project.

5.2.7 Duration and Termination of Licenses

The duration of licenses granted by MTC to Contractor shall be the Contract Term (plus six months, if Contractor is transitioning to another contractor). The duration of the licenses granted to MTC by Contractor (with the exception of licenses to Commercial Software) shall be perpetual.

The only grounds for termination by Contractor of a software license granted under this Article are failure on the part of MTC to complete payment for such licenses or willful or reckless breach by MTC of a restriction on use of such license or of the confidentiality provisions of Article 5.3.

5.2.8 Detailed List of 511 Software

MTC has provided Contractor with a detailed list of all 511 Software describing: (a) whether the software is MTC Software or Restrictive Software or Commercial Software; (b) its manufacturer and model; and (c) a designation of the software's function; and (d) a complete list of all applicable software development tools (all software required to operate the 511 software, including operating systems, libraries, tools and utilities, data base structures and code and compilers; to alter/edit the source code; and/or to successfully recompile the software (for software subject to Article 5.2.5)). Within three months of Contract execution, and every six months thereafter, Contractor shall update such list.

5.3 CONFIDENTIAL INFORMATION

5.3.1 Confidential Information Defined

"Confidential Information" is defined as proprietary or valuable commercial information, designated as Confidential by the party disclosing such Information ("the disclosing party"), including patents, trademarks and copyrights and applications therefore, together with all associated intellectual property, inventions, discoveries, trade secrets, improvements, data, formulae, practices, processes, methods, technology, and other know-how. Confidential Information may be proprietary to the Contractor or one of its subcontractors or to an MTC third party contractor not party to the Contract.

Confidential Information does not include information (a) that was lawfully developed by and in possession of the party receiving the information (“the receiving party”) prior to its receipt; (b) that is now, or hereafter becomes, through no act or failure to act on the part of the receiving party, published information in the public domain; or (c) that heretofore was or hereafter is furnished to the receiving party by a third party as a matter of right without restriction on disclosure.

5.3.2 Nondisclosure of Confidential Information

During the performance of the work under the Contract, it may be necessary for one party to this Contract to disclose or make Confidential Information available to the other party. Subject to the provisions of Article 5.3.3 below, the receiving party agrees to use all such Confidential Information solely in connection with the Project and to hold all such information in confidence and not to disclose, publish, or disseminate the same to any third party, other than those of its directors, commissioners, officers, employees, or Project agents bound by the nondisclosure requirements of this Article 5.3 with a need to know, without the prior written consent of the disclosing party, except as required by a court of competent jurisdiction. The parties agree to take reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of such Confidential Information.

The parties agree to require any agents or third parties to whom Confidential Information must be disclosed to execute a nondisclosure agreement that incorporates the substantive requirements of this Article 5.3, the terms of which will be provided in advance to the other party for review and comment.

5.3.3 Contractor Designation of Confidential Information

MTC’s rights and responsibilities with respect to disclosure of any printed or electronic document or writing are subject to the California Public Records Act (“the Act” in this Article) (California Government Code §§ 6250 *et seq.*). To the extent that Contractor considers any writing, as defined in Government Code § 6252 (e), to be a trade secret or otherwise confidential or proprietary, Contractor shall mark such document or record “Confidential”. MTC’s agreement with Contractor’s designation of the document or record shall be presumed 15 days after its receipt, and MTC will treat such document or record as Confidential Information, pursuant to Articles 5.3.1 and 5.3.2, without any further action on Contractor’s part.

If MTC disagrees with Contractor's designation of the document or record as Confidential Information, MTC shall notify the Contractor of MTC's decision in writing and may: (a) return the document to the Contractor, requesting that it be re-designated as non-confidential or re-submitted, excluding any Confidential Information; (b) agree to accept such document or record as Confidential Information, provided that Contractor agree in writing to indemnify, defend and hold MTC harmless against any claims, suits or other proceedings instituted against MTC under the Act for access to such writing, paying all costs associated with such claims, suits or actions, including legal fees, with sole control of their defense, including all negotiations, and any settlement or compromise; or (c) initiate mediation pursuant to 12.1.3.

6. OPERATION OF 511 SYSTEM

6.1 GENERAL OBLIGATIONS

Contractor shall assume responsibility for all planning, operation, and maintenance of the 511 system services, as described in *Volume II*, Scope of Work and Functional Requirements, effective July 1, 2009.

6.2 OPERATING POLICY

All policy decisions regarding the Project's operations shall rest with MTC. Such matters as the hours of service, levels of service, public and media information, and interfacing with the public at large shall be determined as provided in the Contract or as otherwise directed by MTC.

6.3 PROHIBITION ON USING CHP INFORMATION

In addition to the restrictions on use and disclosure of Confidential Information set forth in Article 5.3, Contractor is prohibited from disclosing, broadcasting or otherwise using Confidential Information received directly from the California Highway Patrol ("CHP") and not through MTC. Willful disclosure of such information or disclosure resulting from the gross negligence of Contractor shall result in the imposition of a monetary fine in the amount of \$25,000 for the first occurrence and \$50,000 for any occurrence thereafter. The designation of information as Confidential shall be solely the prerogative of CHP.

6.3.1 Timetable for Processing Security Clearances

Contractor shall provide to MTC and the CHP Golden Gate Division the names of its Traveler Information Center (TIC) employees as their employment is confirmed. TIC employees will be scheduled for fingerprinting no later than ten calendar days from the date of their appointment. Contractor shall also follow all other provisions of the CHP Golden Gate Division's Standard Operating Procedures as they related to security of the Traveler Information Center.

6.4 ASSIGNMENT OF INFORMATION SERVICE PROVIDER AGREEMENTS

The provisions of Article 9.2 relating to assignment of subcontracts apply to Contractor's agreements with Information Service Providers.

6.5 REVENUE-SHARING

TBD

6.6 OWNERSHIP OF PROJECT EQUIPMENT AND SUPPLIES

Upon Project Completion, as defined in Article 9.1, MTC shall own all equipment, including computer hardware, and supplies purchased under this Contract and still useful in the operation of the project when Project Completion is attained.

7. SYSTEM REQUIREMENTS

7.1 GENERAL OBLIGATIONS

Contractor shall perform all planning, design, maintenance, operations and software development services and complete all corresponding submittals required in *Volume II*, Scope of Work and Functional Requirements, and/or related to the system requirements in *Volume II*, Appendix __, Functional Requirements.

7.2 MTC REVIEW OF SUBMITTALS

MTC will promptly review all submittals requiring its approval, and provide approval or rejection on a timely basis, as defined in *Volume II*, Appendix 4. Rejections of submittals shall be accompanied by written explanation of the reasons for rejection.

7.3 ACCESSIBILITY REQUIREMENTS

Contractor shall ensure that optimizations and enhancements affecting the accessibility of the 511 system to potential users be accessible to persons with disabilities, as required by the Americans with Disabilities Act of 1990. In particular, any web pages shall have text-based options that can be read by text-to-voice systems, and the telephone system shall have a TTY option available.

8. PROJECT COMPLETION

8.1 ACHIEVEMENT OF PROJECT COMPLETION

Project completion will be achieved when MTC determines that the Contractor has complied with the system requirements set forth in the Contract and all of the following has occurred:

- a. MTC has received all documents, drawings, software, interface data, test data, manuals and other deliverables for the Project required under the Contract;
- b. Contractor has submitted all requests for Change Orders, disputes of change notices/orders, or claims under Articles 11 and 12.2, or a statement that no such requests, protests or, to the best of its knowledge, claims will be applied for; and
- c. A Final Contractor DBE Utilization Report has been submitted (see Article 9.6.2).

8.2 TRANSITION AT END OF CONTRACT TERM

8.2.1 Training of MTC Personnel/Third Party Contractor

If requested by MTC, Contractor shall provide a transition plan and training of MTC personnel or the personnel of an MTC -designated organization to operate and maintain the Project following the conclusion of the Project term. The transition plan will include all, but not limited to, the following: a listing of all systems, hardware and software, on which training will be required, a training schedule, and proposed costs. Such training shall include training of MTC personnel or of a third party contractor in the operation of the 511 software systems. If so requested, Contractor shall provide all instructors, literature, training aids, and equipment reasonably necessary to train personnel to operate and maintain the Project, which shall be turned over to MTC at the termination of the Contract.

8.2.2 Condition of Assets

By the end of the Contract term, all assets shall be in a state of good repair, taking into consideration normal wear and tear and the useful life of the project assets.

9. SUBCONTRACTORS

9.1 CONTRACTOR'S RESPONSIBILITY FOR SUBCONTRACTORS

No contractual relationship shall exist under the Contract other than the contractual relationship between MTC and Contractor, and no subcontract shall relieve Contractor of his/her responsibilities and obligations hereunder. MTC shall not be bound by any Subcontract, and no Subcontract shall include a provision purporting to bind the MTC.

Contractor agrees that it is as fully responsible to MTC for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by Contractor. Notwithstanding any Subcontract or agreement with any Subcontractor, Contractor shall be fully responsible for all of the Work. Contractor's obligation to pay its subcontractors is an independent obligation from MTC's obligation to make payments to Contractor.

Contractor shall be obligated to assist MTC in the enforcement of any rights that MTC has against any Subcontractor. Any claim by Contractor for additional compensation or schedule extension based on a Subcontractor's claim shall be passed on to MTC for review only after an independent review and determination by Contractor that such Subcontractor's claim has merit under the terms and conditions of the Contract.

Contractor shall not replace subcontractors without prior written consent of MTC, which consent shall not be unreasonably withheld.

9.2 ASSIGNMENT OF SUBCONTRACTS TO MTC

Each instrument evidencing any agreement of Contractor with any Subcontractor shall provide, pursuant to terms in form and substance satisfactory to MTC, that (a) the rights of Contractor under such instrument are assigned to MTC contingent only upon written request from MTC or a successor Contractor following Contract termination or expiration; and (b) all warranties (express and implied) of such Subcontractor shall inure to the benefit of MTC.

9.3 MANDATORY TERMS OF SUBCONTRACTS

Each Subcontract shall include any mandatory terms specified herein, and terms and conditions sufficient to ensure compliance by the Subcontractor with all applicable Contract requirements. Contractor shall ensure that, when minimum wage rates are

applicable to work performed under the Contract, they shall apply to labor performed under subcontracts or by assignment. Contractor shall include in its subcontracts the mandatory provisions applicable to subcontracts in Article 13, including without limitation Articles 13.2.2, 13.2.3, 13.2.5, 13.2.7, 13.2.8, 13.2.15, 13.2.16, 13.2.17, and 13.3.

9.4 MAJOR SUBCONTRACTORS

Any Subcontractor receiving \$100,000 under a Subcontract over the term of the Contract is a Major Subcontractor. Substitution of Major Subcontractors without MTC's express written consent shall constitute grounds for termination under Article 14.3.

9.5 SUBCONTRACT RECORDS

A list of Contractor's Subcontractors is included in the Contract as Attachment 8. Such list shall be updated when Subcontractors change, upon MTC written approval, without the need for a change order. Contractor shall allow MTC access to all Subcontracts and records regarding Subcontracts and shall deliver to MTC, within thirty (30) days after execution or the point when the Subcontractor becomes a Major Subcontractor, true and complete copies of all Subcontracts with Major Subcontractors, excluding confidential data.

9.6 DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal. Contractor's DBE subcontractors are listed in Attachment 6, Local Agency Proposer/Bidder -DBE (Consultant Contracts) - Information, attached hereto and incorporated herein by this reference.

B. DBE and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.

C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

D. Contractor shall maintain full and accurate records of DBE participation in the performance of this Agreement, including payment amounts. Contractor shall submit quarterly reports to the MTC DBE Liaison Officer, which include the names and addresses of the DBEs performing work during the previous quarter and the total amounts billed and paid during the quarter.

E. Contractor shall require its subcontractors to notify Contractor in writing: (1) if they are certified DBE subcontractors who become decertified during the Term of the Contract, including the date of decertification; or (2) if they become a certified DBE during the Term, including the date of certification. Any such changes shall be reported to the MTC Project Manager within thirty (30) days of receipt of the subcontractor's notice.

9.6.1 Performance of DBE Contractors and Other DBE Subcontractors/Suppliers

A. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

C. If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of

normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

D. Upon Project Completion, Contractor shall prepare and submit a summary of DBE records on a report form to be furnished by MTC currently entitled Final Report-Utilization of Disadvantaged Business Enterprises (DBE), certified as accurate by the Contractor. Such form shall be furnished to the MTC Project Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in a twenty-five percent (25%) withholding of the dollar value of the invoice until the form is submitted. Any amount withheld shall be paid to Contractor when a satisfactory form is submitted to the MTC Project Manager.

9.7 PAYMENT TO SUBCONTRACTORS

Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Contractor by MTC. Contractor may pass through to a Subcontractor its proportionate share of the retainage withheld by MTC pursuant to Article 3.5.

The Contractor shall return all monies withheld in retention from all subcontractors within ten (10) days after receiving payment for Work satisfactorily completed and accepted including incremental acceptances of portions of the Work by MTC. Any delay or postponement of payment may take place only for good cause and with MTC's prior written approval. Any violation of these provisions shall subject the Contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

10. RISK ALLOCATION

10.1 FORCE MAJEURE

Contractor shall not be responsible for any delays in performance resulting from a “Force Majeure” event, i.e., any event beyond the control of Contractor and not due to an act or omission of Contractor that materially and adversely affects Contractor’s obligations hereunder and which event (or the effects of which event) could not have been avoided by due diligence and use of reasonable efforts by Contractor, including, but not limited to, the following:

- a. Any earthquake, hurricane, flood or other natural disaster;
- b. Any epidemic, blockade, rebellion, war, riot, act of sabotage or civil commotion, disastrous or extensive fire or explosion, or strike;
- c. The suspension, termination, interruption, denial or failure to obtain, renew or amend any permit MTC is responsible for obtaining;
- d. Any change in a governmental rule or regulation, or change in the judicial or administrative interpretation of a governmental rule or regulation, or adoption of any new governmental rule or regulation that imposes significant additional costs or delays on Contractor and that was not proposed or otherwise reasonably foreseeable at the Proposal Date; and
- e. Any lawsuit seeking to restrain, enjoin, challenge or delay construction of the Project or the granting or renewal of any governmental approval that is necessary to the Project.

Contractor shall be granted an extension of time to compensate for the delay in the completion of its Work caused by a Force Majeure Event, provided that the Contractor establishes that the Work would have been completed in a timely manner but for the Force Majeure event, that the Contractor has taken reasonable precautions to prevent delays due to such causes, and provided that the Contractor has complied with the notice and other provisions of Article 11. The above-indicated causes for which extensions of time have been granted hereunder shall not in and of themselves entitle Contractor to additional compensation, except as provided in Article 11.

10.2 MTC-CAUSED DELAYS

MTC-Caused Delays are delays caused by MTC that affect Contractor's adherence to the Approved Project Schedule, including failure of MTC to act upon complete Contractor submittals in a timely manner. Contractor shall not be responsible for MTC-Caused Delays.

10.3 INDEMNIFICATION

10.3.1 General

Contractor shall indemnify and hold harmless MTC, FHWA, Caltrans, their commissioners, directors, officers, agents, and employees from any and all claims, demands, suits, loss, damages, injury, and/or liability (including any and all costs and expenses in connection therewith), incurred by reason of any negligent or otherwise wrongful act or omission of Contractor, its officers, agents, employees and subcontractors, or any of them, under or in connection with this Agreement. Accordingly, Contractor agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against MTC, FHWA, Caltrans, their commissioners, directors, officers, agents, and employees, or any of them, arising out of such negligent or otherwise wrongful act or omission, and to pay and satisfy any resulting judgments.

10.3.2 Patent and Copyright Indemnification

Contractor shall indemnify, defend and hold harmless MTC, and any or all of its commissioners, officers, and employees, including temporary MTC employees, from and against any and all claims, liabilities, losses, damages or expenses (including reasonable attorneys' fees and related costs, whether or not litigation has commenced) arising out of, relating to, or based on the allegation that the Project or any portion thereof infringes the proprietary and intellectual property rights of any third party in or to any invention, patent, copyright or any other rights, provided that (a) MTC notifies Contractor in writing promptly but not more than thirty (30) days after MTC has actual notice of the claim; (b) Contractor has sole control of the defense and all related settlement negotiations; and (c) MTC gives Contractor information and reasonable assistance for the defense. If Contractor fails or refuses to defend any such claim, MTC may assume control of the defense, and Contractor shall indemnify and hold MTC harmless for all fees, costs and expenses associated with or arising from such defense. Contractor will not be responsible for any settlement made or for any costs, expenses, or fees incurred by MTC without its

prior written consent, which consent shall not be unreasonably withheld. This indemnification by Contractor does not extend to liability for any claim based upon alteration or modification of Contractor's products, equipment or software, unless Contractor has specifically approved such alteration or modification.

10.4 RISK OF DAMAGE AND LOSS

Notwithstanding any passage of title to Work Products, 511 Software, or Project equipment and supplies effected pursuant to Articles 5.1, 5.2 or 6.7, Contractor shall bear all risk of damage or loss to all materials, equipment and property required for the implementation of the Project, with the exception of materials, equipment or property located at MTC's office or any other site the usage of which is controlled by MTC.

10.5 MITIGATION OF DAMAGES AND DELAYS

Contractor and MTC agree to take all reasonable and appropriate actions to mitigate damages in all circumstances, including, with respect to Contractor, resequencing, reallocating or redeploying its resources.

10.6 LIMITATION OF LIABILITY

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR LOSS OF USE, LOSS OF TIME, INCONVENIENCE, FRUSTRATION OF ECONOMIC OR BUSINESS EXPECTATIONS, OR ANY OTHER INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER ARISING OUT OF, CAUSED BY OR RELATED TO THIS CONTRACT.

10.7 PASSAGE OF TITLE

Title to all hardware and supplies purchased under this Contract and still useful in the operation of the Project shall pass to MTC at Project Completion, as defined in Article 8.1. Title to Work Products, as defined in Article 5.1.1, and 511 Software is governed by the provisions of Article 5.1 and 5.2, respectively.

11. CHANGE ORDERS

11.1 GENERAL

MTC reserves the right to require changes to the Work, subject to the provisions of this Article 11. Subject to Article 11.10, Task Orders, all changes to the Contract shall be implemented by means of a Change Order signed by both parties.

11.2 MTC-INITIATED CHANGE NOTICE

Except as provided in Article 11.10, each proposed change to the Contract initiated by MTC pursuant to Article 11.1 will be initiated by means of a written Change Notice issued by MTC. The Change Notice will include a description of the scope of the proposed change and a request for Contractor to submit a proposal for performance of the changed work, including all compensation and/or schedule impacts.

Contractor shall have ten (10) days to review and respond to the Change Notice, unless MTC has specified a different period, based upon the needs of the Project. If the Contractor agrees with the terms and conditions of a Change Notice, the Contractor shall sign a copy of the Change Notice and return it to the MTC Project Manager. A Change Order will be issued for the Contractor's signature pursuant to Article 11.6, and the Contractor shall promptly proceed with the work as indicated therein.

If the Contractor disagrees with the terms and conditions of a Change Notice, the Contractor shall request a meeting with MTC to discuss the Change Notice. If the Contractor and MTC do not come to agreement, the Contractor may follow the protest procedures in Article 11.7. If the Contractor fails to follow the protest procedures in Article 11.7, the Contractor shall not be entitled to any claim for additional compensation or schedule extension for the change other than those specified in the Change Notice.

If so ordered in a Change Notice, the Contractor may proceed with the work described in the Change Notice prior to agreement on any compensation or schedule adjustments, at Contractor's option. If the parties are then unable to reach agreement on the terms and conditions of the proposed Change Notice Contractor may follow the protest procedures in Article 11.7.

11.3 CONTRACTOR'S CHANGE NOTICE PROPOSAL

Contractor shall provide to MTC a proposal for providing the changed work within the time specified in the Change Notice. The Contractor's proposal shall contain cost or price information sufficient to allow MTC to make a determination that any increase in compensation to Contractor is fair and reasonable. If cost reasonableness cannot be established on the basis of a catalogue or market price of a commercial product sold in substantial quantities, or on the basis of prices set by law or regulation, Contractor is required to submit detailed cost breakdowns, including information on labor and materials costs, overhead and other indirect costs.

If the Contractor believes the changed work will have a schedule impact, the proposal must include changes to the Approved Project Schedule.

MTC will review the Contractor's proposal, and the parties shall negotiate in good faith to determine the final terms and conditions of the Change Order and equitable adjustments to the Contract Price and/or Approved Project Schedule.

11.4 CONTRACTOR-INITIATED CHANGE ORDERS

Should circumstances arise which, in the opinion of the Contractor, justify additional compensation or time or require changes in the Work specified by the Contract, the Contractor may initiate a change order by written request, including sufficient information regarding cost and schedule to provide a basis for negotiation with MTC, as provided in Article 11.3, including references to applicable provisions of the Contract; the factual reasons for which the Contractor believes a revision to the Functional Requirements, a revision to the Scope of Work, additional compensation, or a schedule extension is called for; and an estimate of any cost increase or schedule extension.

The Contractor shall meet with the MTC Project Manager or any other designated representative of MTC involved in evaluating the Contractor's request for a Change Order. Following such discussion(s), MTC will issue a Change Order for Contractor's signature under Article 11.6; issue a written denial of Contractor's request for a Change Order; or accept the request in part and deny it in part. If Contractor disagrees with MTC's action, it may protest MTC's action pursuant to Article 11.7.

Notwithstanding any request for a Change Order, the Contractor's duty to complete the Work in accordance with the provisions of the Contract shall not be postponed or abated.

11.5 EXTENSIONS FOR CERTAIN DELAYS

To the extent that the Contractor has been delayed by a Force Majeure Event under Article 10.1 or an MTC-Caused Delay under Article 10.2, an extension of the Project Completion Date commensurate with the delay thus caused will be granted, provided that the Contractor has complied with the notice and other procedures set forth herein. If, in addition, the Contractor has suffered actual losses as a result of the delay; the Contractor took all reasonable precautionary and remedial actions, and was not able to fully mitigate such actual losses; and the delay was not within the contemplation of the Contract, then MTC shall pay the Contractor the amount of the actual loss, provided that the Contractor has complied with the notice and other claims procedures set forth herein. Actual loss for delays shall be understood to include no items of expense other than reasonable, verified amounts.

11.6 CHANGE ORDERS

Change Orders shall be issued by MTC as soon as practicable after their initiation by either party. If Contractor agrees with the terms and conditions of a Change Order, Contractor shall sign the Change Order and return it to the MTC Project Manager. If Contractor disagrees with the terms and/or conditions of a Change Order, Contractor shall follow the protest procedures set forth in Article 11.7. If the Contractor fails to follow such protest procedures, the Contractor shall not be entitled to any claim for additional compensation or schedule extension arising out of or relating to any change in the Work other than that specified in the Change Order, and payment will be made as set forth in the Change Notice or Change Order. Such payment shall constitute full compensation and schedule adjustment for any Work required therein, or all events giving rise to a Contractor requested Change Order. The Contractor will be deemed to have consented to the terms and conditions set forth in any Change Order or Change Notice, which Contractor does not dispute within the time period stated.

When the Change Order has been signed by both parties (whether or not Contractor has protested the Change Order), Contractor shall promptly proceed with the Work as indicated in the Change Order. A Change Order signed by both parties, or in the

case of a claim, a revised Change Order signed by both parties, constitutes an amendment to the Contract, effective as of the date last signed, unless otherwise agreed by the Parties.

11.7 PROTEST OF CHANGE NOTICES OR CHANGE ORDERS

If Contractor disagrees with any terms or conditions set forth in a Change Notice or Change Order issued pursuant to Articles 11.1 or 11.3, and informal attempts at resolving the dispute have been unsuccessful, the Contractor shall write “protested” where the Change Notice or Change Order calls for Contractor’s signature, sign such protest, and return the Change Order or Change Notice to the Project Manager within the time specified, or, if no time is specified, within ten (10) working days after its receipt, along with a written protest. The protest shall state the items of disagreement, include any Contract references, and shall propose a modification of the protested items. When the protest of a Change Notice or Change Order relates to compensation, the Contractor shall submit to the Project Manager sufficient detail regarding the cost or price of such work as to enable the Project Manager to determine the appropriate compensation. Failure to present such information and detail will be sufficient cause for rejecting any protest. In addition, Contractor shall provide any information or detail the Project Manager, at the Project Manager’s discretion, believes is necessary to consider the protest.

The Contractor shall cooperate with the Project Manager to resolve the protest at the earliest practical time. If agreement is reached, a revised Change Notice or Change Order will be issued by MTC for Contractor’s signature. If MTC determines to deny the protest, in whole or in part, a written notification of the items accepted and rejected shall be provided, along with a revised Change Notice or Change Order. If MTC denies the Contractor’s protest or if the Contractor disagrees with the revised Change Notice or Change Order, the Contractor shall follow the claims procedures in Article 12.2. During the pendency of any claim, Contractor shall proceed with the work described in the protested Change Notice or Change Order, and compensation shall be as specified thereunder.

If a written protest is not submitted, payment will be made as set forth in the Change Notice or Change Order and such payment shall constitute full compensation and schedule adjustment for any Work required therein, or all events giving rise to a Contractor requested Change Order. The Contractor will be deemed to have consented to

the terms and conditions set forth in any Change Order or Change Notice which Contractor does not protest within the time period stated.

11.8 CHANGE ORDER RECORDS

Notwithstanding the agreed-upon prices are deliverables or milestone-based, MTC and its representatives have the right to examine all books, records, documents and other data of Contractor related to cost or price data submitted in connection with Change Orders, unless such data is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by MTC to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

11.9 EXCLUSIVE REMEDIES

The procedures specified in this Article are the Contractor's exclusive remedy for actual or constructive changes or delays. No course of conduct or dealings between the parties, no express or implied acceptance of changes or alterations to the Work, and no claim that MTC has been unjustly enriched by an alteration or change to the Work, shall be the basis of any other claim for an increase in Contract Price or extension in the time for completion of the Work.

11.10 TASK ORDERS

Work required in connection with any Enhancements, as defined in Project Element VI, *Volume II*, Scope of Work and Functional Requirements, will be described in a Task Order, establishing the scope of work, schedule and budget for the Work. Provided that funds for a Task Order are available under Article 3.3 and that such Task Order does not extend the Project Completion Date or increase the Contract Price, Task Orders shall be enforceable Contract requirements when signed by both parties, without the need for a Change Order. Task Orders that increase the maximum amount available under Article 3.3, extend the Project Completion Date or increase the Contract Price must be accompanied by a Change Order.

Task Orders shall specify a work scope, schedule, budget and payment provisions (subject to Articles 3.3 and 3.3.1). Development of Task Orders shall follow a procedure

agreed to by the Parties in general accordance with the procedure for development of Change Orders in Articles 11.1 and 11.2.

Payment amounts will be adjusted based on the incentive/disincentive provisions agreed to in each Task Order.

12. CONFLICT RESOLUTION AND CLAIMS

12.1 CONFLICT RESOLUTION

12.1.1 Informal process

Contractor and MTC shall attempt to resolve informally all disputes prior to initiation of the formal dispute procedures set forth in Articles 12.2.

12.1.2 Formal MTC Determination

In an instance where the Contractor and MTC are not able to resolve a dispute informally, Contractor may submit a written statement of its position or interpretation of the Contract, requesting a formal written determination from the Project Manager. If the Contractor disagrees with MTC's determination, Contractor may initiate mediation as provided in Article 12.1.3, or may file a notice of claim pursuant to Article 12.2.

12.1.3 Mediation

At the mutual agreement of the parties, mediation methods and services may be used to assist in conflict resolution, both at the informal stage and during the formal dispute process. Either party may initiate mediation by written notice. Mediation may be binding or non-binding, as agreed by the parties. Fees and expenses of the mediator will be borne equally, unless otherwise agreed, except that MTC shall provide to the mediator, at no cost to Contractor, administrative services, such as conference facilities and secretarial services. The parties shall be represented by individuals of their choosing. Lawyers may participate only if both parties agree. The entire process shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence. If the parties cannot agree on a mediator, the American Arbitration Association in San Francisco will be requested by MTC to appoint one.

If the parties agreed on non-binding mediation and they are unable to come to a mutually agreeable resolution to the dispute, Contractor may pursue the dispute through the procedures of Article 12.2 after the conclusion of mediation attempts. If the parties are able to resolve their dispute through mediation, MTC shall promptly process any appropriate Contract Change Order.

12.2 CLAIMS

Except as provided in Article 11, Contractor shall not be entitled to any additional compensation or damages otherwise payable or to any extension of time for completion as a result of any act or failure to act by the MTC Project Manager or MTC, the happening of any event or occurrence, or any other cause, unless Contractor shall have given the MTC Project Manager a written notice of claim therefore as hereinafter specified and shall have complied with the other requirements specified in this Article.

12.2.1 Notice of Claim

The Contractor shall provide the MTC Project Manager with a written notice of claim no later than twenty (20) working days following either the occurrence of the event on which such claim is based or the date on which Contractor knew or should have known of the event, or, in the case of a disputed Change Order, no later than ten (10) working days of its receipt, unless the MTC Project Manager agrees in writing to an extension.

The notice of claim shall contain as much information regarding the event on which the claim is based and its impact on cost or schedule as is reasonably available to Contractor within such time period, including applicable Contract references, the reasons for which Contractor believes additional compensation or a schedule extension will or may be due, the nature of the costs or schedule extension involved, the efforts taken and to be taken to prevent or minimize the costs or extension and, insofar as possible, the amount of the claim or schedule extension.

If the claim involves a disagreement with any terms or conditions of an MTC - initiated Change Order issued pursuant to Article 11, Contractor shall make claim by writing "disputed" on the Change Order and returning it to MTC. The notice of claim shall state the items of disagreement with the Change Order, including any Contract references in support of Contractor's position, and propose a modification of the protested items. When the protest of a Change Notice or Change Order relates to compensation, Contractor shall submit to the MTC Project Manager sufficient detail regarding the cost or price of such work as to enable the MTC Project Manager to determine the appropriate compensation.

All notices of claim presented by Contractor shall be in sufficient detail to enable the MTC Project Manager to ascertain the basis and amount of said claim. Contractor shall furnish, within such reasonable time as is specified in writing by the MTC Project Manager's written request, such further information and details as may be reasonably

required by the MTC Project Manager to determine the facts or contentions involved in the Contractor's notice. Failure to present such information within the required time will be sufficient cause for rejecting any claim after the MTC Project Manager's request for further information, unless such time is extended in writing by the MTC Project Manager.

Contractor may amend any notice of claim within ten working days after the date of submission of the original notice. Any amendments presented after that time shall be considered only at the option of MTC.

Notwithstanding any notice of claim, Contractor's duty to complete the Work in accordance with the provisions of the Contract shall not be postponed or abated.

12.2.2 Resolution of Claim

MTC and Contractor shall cooperate to resolve the claim at the earliest practical time. Contractor shall, as required by MTC, meet and confer with the MTC Project Manager or any other representative of MTC involved in evaluating Contractor's potential claim to discuss the claim.

MTC shall give a formal response to a notice of claim within thirty (30) working days after all information requested by MTC has been provided by Contractor. This time limit may be extended only by mutual agreement in writing.

If agreement is reached, a Change Order incorporating the agreement (or, in the case of a disputed Change Order, a revised Change Order) will be issued by MTC for Contractor's signature. If MTC determines to deny the protest, in whole or in part, a written notification of the items accepted and rejected shall be provided, along with a Change Order incorporating the accepted items.

During the pendency of any claim, MTC may require Contractor to proceed with Work affected by the claim if the Project would suffer unreasonable harm from a delay. In such event, compensation shall be as specified thereunder, and Contractor may either initiate arbitration pursuant to Article 12.1 or pursue other remedies pursuant to Article 12.3.

If MTC fails or refuses to act on a potential claim within such time, the claim shall be deemed to have been rejected by MTC on the last day of the period within which MTC was required to act upon the claim, and Contractor may either initiate mediation pursuant to Article 12.1 or pursue other remedies pursuant to Article 12.3.

12.2.3 Failure to Comply with Claims Procedures

Failure to comply with the notice and other procedures set forth in this Article 12.2 shall bar Contractor from asserting any claim or right to compensation, damages, schedule extension or any other relief.

12.2.4 Final Invoice

Within 30 days after the date of Project Completion, as defined in Article 8, Contractor shall prepare and present to the MTC Project Manager a Proposed Final Invoice, showing the proposed total amount of compensation previously paid and remaining to be paid under the Contract; all amounts retained by MTC under the provisions of the Contract for which payment is sought; and any claims refused by MTC which Contractor has elected to appeal.

12.2.5 MTC Payment of Final Invoice

All prior invoices and payments shall be subject to correction in the Proposed Final Invoice. MTC will review Contractor's Proposed Final Invoice and respond with a written request for additional information or documentation, changes or corrections within thirty (30) days of its receipt or, in the case of a Final Invoice accompanied by one or more claims, within sixty (60) days.

Based on MTC's response, Contractor shall submit a Final Invoice within thirty (30) days of its receipt, incorporating any changes or corrections made by MTC, together with any additional requested information or documentation. No later than thirty (30) days after receipt of the Final Invoice or fifteen (15) days after conclusion of the post-project audit, whichever is later, MTC shall respond to the Final Invoice. If MTC agree with all requests for compensation in the Final Invoice, MTC will pay the entire sum found due and will provide Contractor with a copy of an Approved Final Invoice. If MTC does not agree with any amounts claimed as compensation, MTC shall respond in writing, identifying those items in the Final Invoice that MTC is refusing to pay, along with a written explanation of the basis of the rejection. If MTC fails or refuses to act on a Final Invoice within the required time period, the claim shall be deemed to have been rejected by MTC on the last day of the period within which MTC was required to respond.

Upon final determination of all Contractor's claims for payment in the Final Invoice, MTC shall pay the entire sum found due. MTC may, at that time, elect to make payment of sums not in dispute, without prejudice to the rights of either MTC or Contractor in connection with such disputed sums.

12.3 ADDITIONAL REMEDIES

If MTC rejects all or any part of the Final Invoice, Contractor may pursue whatever remedies it may have under the Contract at law or equity. Interest, at the rate of 1.5 % per month, shall accrue in favor of Contractor with respect to any such claim commencing sixty (60) days after the date of MTC's formal claim determination or the last date of mediation, whichever occurs later.

12.4 CONTRACTOR'S OBLIGATIONS

Failure by MTC to pay any amount in dispute shall not alleviate, diminish or modify in any respect Contractor's obligation to perform under the Contract, including Contractor's obligation to achieve Final Acceptance of the Project and to complete all Work in accordance with the Contract, and Contractor shall not cease or slow down its performance under the Contract on account of any such amount.

13. ADMINISTRATIVE REQUIREMENTS

13.1 LAWS TO BE OBSERVED

Contractor shall at all times observe, and shall cause all Contractor's agents, employees and subcontractors to observe all governmental requirements that in any manner affect those engaged or employed in the work under the Contract, or the materials used or the conduct of the work under the Contract. If any discrepancy or inconsistency is discovered in the Contract for the work in relation to any such governmental requirements, Contractor shall immediately report the same to the MTC Project Manager in writing.

13.2 DEPARTMENT OF TRANSPORTATION REQUIREMENTS

This Contract is financed in part with federal funds from the United States Department of Transportation (DOT). In performance of its obligations pursuant to this Contract, Contractor agrees to comply with all applicable provisions of federal, state, and local law, regulations, and directives. The terms of the most recent amendment to any federal, state or local law, regulations, directives, and amendments to the grant or cooperative agreement providing funding for this Contract that may be subsequently adopted, are applicable to the Contract to the maximum extent feasible, unless otherwise provided. MTC agrees to notify Contractor promptly in writing of any changes in its grant conditions or terms applicable to and affecting this Contract. Any effect of such amendment(s) on Contractor's costs or the Project Schedule will be subject to the Change Order provisions of Article 11.

13.2.1 Disadvantaged Business Enterprise (DBE) Requirements

It is the policy of MTC and DOT to ensure nondiscrimination in the award and administration of DOT-funded contracts and to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to MTC's procurement and professional services activities. The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 Code of Federal Regulations Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract,

which may result in the termination of this Contract or such other remedy as MTC deems appropriate.

13.2.2 Title VI of The Civil Rights Act of 1964 Requirements

Contractor shall comply and assure compliance by its subcontractors of any tier with all of the requirements of Title IV of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, 49 U.S.C. § 5332, and with the Regulations relative to nondiscrimination in federally-assisted programs of the DOT. Title 49 Code of Federal Regulations Part 21, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.

Contractor, with regard to the work performed by it during this Contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

Contractor shall include this provision in every Major Subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as MTC may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or Contractor as a result of such direction, Contractor may request MTC to enter into such litigation to protect the interests of MTC and, in addition, Contractor may request the appropriate DOT operating administration or MTC to enter into such litigation to protect its interests.

13.2.3 Reporting, Record Retention And Audit

Contractor shall, during the course of the Contract and for four (4) years after final audit, maintain intact and readily accessible all Project books, accounts, data, documents, reports, records, contracts, and supporting materials (hereinafter, "Project Records") relating to the Contract as provided below. Documentation not considered Project Records, as agreed to by MTC, may be disposed of in accordance with MTC's records retention policy.

Contractor shall permit MTC, DOT, the Comptroller General of the United States, Caltrans, or their authorized representatives, to inspect all such Project records and to audit such Project Records, except that (a) confidential and proprietary records of Contractor or its subcontractor, as defined in Article 5.3, shall be disclosed only in

accordance with applicable nondisclosure terms; and (b) no auditors shall be given actual possession of proprietary information. In accordance with 49 U.S.C. § 5325(a), Contractor shall require each subcontractor to permit MTC, DOT, the Comptroller General of the United States, Caltrans or their duly authorized representatives, to inspect all Project records involving that subcontractor agreement and to audit the Project Records involving that subcontractor agreement as it affects the Contract.

Contractor shall permit MTC, DOT, the Comptroller General of the United States, Caltrans or their authorized representatives, to inspect, examine and copy those documents described in this Article 13.2.3 at any reasonable time for the purpose of auditing and verifying statements, invoices or bills submitted by Contractor pursuant to this Contract and shall provide such assistance as may be reasonably required in the course of such inspection. MTC further reserves the right to examine, and re-examine said books, records, accounts and data during the three-year period following the final audit under this Contract and all pending matters are closed, and Contractor shall in no event dispose of, destroy, alter or mutilate said books, records, accounts and data in any manner whatsoever for three years after the final payment of this Contract and all pending matters are closed.

Pursuant to California Government Code Section 10532, the parties to the Contract shall be subject to the examination and audit of the Auditor General of the State of California for a period of three years after final payment under the Contract. The examination and audit shall be confined to those matters and documents directly pertinent to the performance of the Contract, as described herein.

13.2.4 Buy America Certification

This Contract is subject to the Buy America requirements of Section 165 of the Surface Transportation Assistance Act of 1982, as may be amended from time to time, and applicable federal regulations. The following is a general summary of the “Buy America” provisions. It shall not relieve the Contractor of the responsibility to comply with official interpretations of the cited statutes or any other governing regulation on the subject:

The Contractor has certified that it will comply with 49 USC 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by DOT or the product is subject to a general waiver.

General waivers are listed in 49 CFS 661.7, and include microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds.

A false certification is a criminal act in violation of 18 USC §1001.

A waiver from the “Buy America” provisions will be sought by MTC from DOT if the grounds for a waiver exist. The Contractor seeking a waiver must submit to MTC a timely request in writing, which shall include the facts and justification to support the granting of the waiver. Such waiver from the “Buy America” provisions may be granted if:

- a. Their application would be inconsistent with the public interest;
- b. Materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- c. Inclusion of domestic material will increase the cost of the overall project contract by more than 10 percent in the case of projects for the acquisition of rolling stock, or by more than 25 percent in the case of all other projects.

13.2.5 Debarment And Suspension

Contractor shall comply with the requirements of Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 6101 note; and U.S. DOT regulations on Debarment and Suspension at 49 CFR Part 29. Contractor shall refrain from entering into any subcontractor agreement of any amount with a party included in the “U.S. General Services Administration’s (U.S. GSA) List of Parties Excluded from Federal Procurement or Nonprocurement Programs,” implementing Executive Orders Nos. 12549 and 12689, “Debarment and Suspension” and 49 CFR Part 29. The list also includes the names of parties debarred, suspended, or otherwise excluded by agencies, and Contractors declared ineligible for contract award under statutory or regulatory authority other than Executive Order Nos. 12549 and 12689.

Before entering into any subcontract with a Major Subcontractor, Contractor shall obtain a debarment and suspension certification from that Major Subcontractor containing information about the debarment and suspension status and other specific information about the subcontractor and its “principals,” as defined at 49 U.S.C. § 29.105(p).

Contractor shall require each Major Subcontractor to refrain from awarding any subcontract of any amount (at any tier) to a debarred or suspended subcontractor, and to obtain a similar certification from any subcontractor (at any tier) seeking a subcontract exceeding \$100,000.

13.2.6 Restrictions On Lobbying

Contractor shall not use funds from the Contract for lobbying, in accordance with 31 U.S.C. § 1352 and U.S. DOT regulations, “New Restrictions on Lobbying,” 49 CFR Part 20.

13.2.7 Air Quality

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* Specifically:

Contractor shall comply with applicable requirements of U.S. EPA regulations, “Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act,” 40 CFR Part 51, Subpart T; and “Determining Conformity of Federal Actions to State or Federal Implementation Plans,” 40 CFR Part 93.

Contractor shall report and require each Subcontractor at any tier to report any violation of these requirements resulting from any Project implementation activity of Contractor or subcontractor to FTA and the appropriate U.S. EPA Regional Office.

13.2.8 Clean Water

Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.* Contractor shall report and require each Subcontractor at any tier to report any violation of these requirements resulting from any Project implementation activity of a Subcontractor or itself to FTA and the appropriate U.S. EPA Regional Office.

13.2.9 Requirements For Persons With Disabilities

In addition to the specific requirements in Article 7.5, Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 *et seq.*; section 504 of the Rehabilitation Act of 1973, as amended,

29 U.S.C. § 794; 49 U.S.C. § 5301(d); and their implementing Federal regulations including any amendments thereto.

13.2.10 Preference For Recycled Products

To the extent practicable and economically feasible, Contractor shall use recycled products pursuant to U.S. Environmental Protection MTC (U.S. EPA) guidelines at 40 CFR Parts 247-253, which implement section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962.

13.2.11 Equal Employment Opportunity

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. To the extent permitted by law, Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor shall also comply with any implementing requirements DOT may issue.

13.2.12 Fair Labor Standards Requirements

Contractor shall comply with the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 206 and 207, which apply to employees performing work under the Contract.

13.2.13 Energy Conservation

Contractor shall comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321 *et seq.*

13.2.14 Covenant Against Gratuities

Contractor warrants that it has not offered or given gratuities in the form of entertainment, gifts or otherwise, to any director, officer or employee of MTC to secure favorable treatment in the awarding, amending or evaluating performance of the Contract.

13.2.15 Patent Rights

If any invention, improvement, or discovery of Contractor or any of its subcontractors is conceived or first actually reduced to practice and paid for in the course of or under the Contract, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, Contractor shall notify MTC immediately and provide a detailed report.

Unless the Federal Government later makes a contrary determination in writing, the rights and responsibilities of MTC, Contractor, any Subcontractors and the Federal Government pertaining to the invention, improvement, or discovery referred to above will be determined in accordance with applicable Federal laws, regulations, including any waiver thereof. Unless the Federal Government later makes a contrary determination in writing, Contractor agrees that, irrespective of its status or the status of any subcontractor at any tier, Contractor shall transmit to FTA those rights due the Federal Government in any invention resulting from this Contract and as further described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

13.2.16 Rights in Data

In accordance with 49 CFR Section 18.34 and 49 CFR Section 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Work Products furnished under this Contract, as defined in Article 5.1.1. As used in the previous sentence, "for Federal Government purposes" means use for the direct purposes of the Federal Government only.

13.2.17 Federally-Mandated Construction Clauses

13.2.17.1 Davis-Bacon Act

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full

amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section l(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iii) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(iv)(A) MTC (or its designated representative for matters pertaining to this Article 14.2.17) shall require that any class of laborers or mechanics which is not listed in

the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. MTC shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by MTC to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise MTC or will notify MTC within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and MTC do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), MTC shall refer the questions, including the views of all interested parties and the recommendation of MTC, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise MTC or will notify MTC within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(iv) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(2) Withholding - MTC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued

payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, MTC may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1 (b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or: trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to MTC (or MTC's designated representative for matters pertaining to this Article 14.2.17) for transmission to the Federal Highway

Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Highway Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee & funds. Furthermore, failure

to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S., Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the

Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) Compliance with Copeland Act requirements - The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in the Contract.

(6) Subcontracts - The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other

clauses as the Federal Highway Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: Debarment - A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in the Contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of the Contract shall not be subject to the general disputes clause of the Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3 (a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

13.2.17.2 Contract Work Hours and Safety Standards Act

(1) Overtime requirements - No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than

one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - MTC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

Section 107 (OSHA):

Contract Work Hours and Safety Standards Act - (i) The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, "Safety and Health Regulations for Construction" 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii) Subcontracts - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials that will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

13.2.17.3 Copeland Anti-Kickback Act

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

13.2.17.4 Prompt Payment of Subcontractors

The following clauses are a requirement of federal-aid construction contracts paid for by progress payments. Should Contractor enter into any subcontractors for construction, in which payment is made on the basis of progress, the relevant terms shall apply:

A prime contractor or subcontractor shall pay to any subcontractor not later than 10-days of receipt of each progress payment, in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30-days may take place only for good cause and with MTC's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section.

MTC shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract

work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business Professions Code.

These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

13.3 ADDITIONAL CONSTRUCTION CLAUSES

13.3.1. Prevailing Wage.

Contractor and each Subcontractor shall pay to all workers employed on the Work not less than the applicable prevailing rate of wages as determined in accordance with the State Labor Code as indicated herein.

State Labor Code. Contractor shall comply with State Labor Code Sections 1774 and 1775. In accordance with said Section 1775, Contractor shall forfeit as a penalty to MTC not more than \$50 for each calendar day or portion thereof for each worker paid less than the prevailing wage rates stipulated herein for such work or craft in which such worker is employed for any Work done under the Contract by Contractor or by any Subcontractor under the Contract (in violation of the provisions of the State Labor Code and, in particular, State Labor Code Sections 1770 to 1780, inclusive). The amount of forfeiture shall be determined by the Labor Commissioner based on specified factors pursuant to said Section 1775. In addition to said penalty and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each Worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

Section 1773 of the State Labor Code. Pursuant to the provisions of Section 1773 of the State Labor Code, MTC has obtained the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation, travel

time and subsistence pay as provided for in Section 1773.8 of said Code, apprenticeship or other training programs authorized by Section 3093 of said Code, and similar purposes) applicable to the Work to be done, for straight time, overtime, Saturday, Sunday, and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of worker concerned. Copies of the prevailing rates of wages are on file at MTC, 101 Eighth Street, Oakland, California, 94607, and will be furnished to the Contractor and other interested parties on request. For crafts or classifications not shown on the prevailing wage determinations, Contractor may be required to pay the wage rate of the most closely related craft or classification shown in such determinations for Contract work.

Posting of Prevailing Wage Rates. A copy of the prevailing rates of wages shall be posted in a prominent place at each jobsite by the Contractor.

Travel and Subsistence Payments. The Contractor shall make travel and subsistence payments to each worker needed to execute the Work in accordance with the requirements in Section 1773.8 of the State Labor Code.

Payroll Records.

(a) The Contractor shall comply with the provisions of State Labor Code Sections 1776 and 1812, and shall be responsible for compliance by its Subcontractors. The penalties specified in subdivision (f) of State Labor Code Section 1776 for noncompliance may be deducted from any monies due which may become due to the Contractor.

(b) A certified copy of payroll records provided for in State Labor Code Section 1776 shall be furnished to the MTC Project Manager, or representative designated for such purpose, each week.

13.3.2 Permits and Licenses.

Except as may be otherwise indicated, the Contractor shall procure all necessary permits and licenses, pay all charges and fees, comply with all permit conditions and give all notices necessary and incident to the due and lawful prosecution of the Work.

14. TERMINATION

14.1 TERMINATION FOR THE CONVENIENCE OF MTC

In accordance with the federal grant requirements in 48 Code of Federal Regulations Section 18.36, the performance of the Work under the Contract may be terminated in whole or in part by MTC upon written notice to the Contractor whenever MTC determines that such termination is in its best interest. After receipt of said notice, Contractor shall submit to the MTC Project Manager its termination claim, which claim shall be submitted in accordance with the claims provisions of Article 12.2. Contractor shall be reimbursed for non-recoverable costs of all equipment, materials, products, software, supplies, and services provided, supplied or produced for the benefit of the Project under this Contract prior to the date of such termination, and all costs incurred for services and commercially reasonable quantities of products and materials received or ordered for the Project (if such orders cannot be canceled), not to exceed the maximum amount payable under the Contract. Such equipment, materials, products and supplies, except for Contractor's Proprietary Work Products and Restrictive or Commercial Software, shall become, on payment, the property of MTC. MTC, in its sole discretion, may choose to take over operation of the Project or any part of the Work following issuance of a notice of termination for convenience.

14.2 TERMINATION FOR CAUSES BEYOND CONTROL OF CONTRACTOR

The performance of Work under the Contract may be terminated by MTC, in its sole discretion, upon application by the Contractor for unforeseen causes beyond the control and without fault or negligence of the Contractor, including any Force Majeure Event as defined in Article 10.1, if such causes irrecoverably disrupt or render impossible Contractor's performance hereunder. Upon termination pursuant to this Article, Contractor shall submit a claim in accordance with the claims provisions of Article 12.2, shall be reimbursed for all non-recoverable costs incurred for equipment, materials, software, supplies and services provided, supplied or produced for the benefit of the Project prior to the date of such termination, and all non-recoverable costs incurred for services and commercially reasonable quantities of products and materials received or ordered (if such orders cannot be canceled), not to exceed the maximum amount payable

under the Contract for such equipment, materials, products, software, supplies and/or services, if applicable. Such products and materials, except for software, shall, on payment, become the property of MTC whether such acceptance occurs before or after such termination.

14.3 TERMINATION FOR CONTRACTOR'S DEFAULT

MTC will provide written notice to Contractor of any default of its obligations under this Contract. Should MTC believe that the Contractor is in default or partial default of this Contract, MTC will notify the Contractor in writing of such possible default, specifying the actions required to cure the default and a reasonable period for curing the default, if such cure period would not cause unreasonable harm to MTC. MTC may investigate the alleged default as it determines appropriate in its sole discretion, before or after the notice of default. Failure on the part of MTC to notify Contractor of any default shall constitute a waiver of MTC's rights under this provision.

MTC, in its sole discretion, may choose to take over operation of the Project or any part of the Work following issuance of a notice of default. In such event, MTC will provide written direction to the Contractor concerning MTC's operation of the Project.

If Contractor is still in material default after the expiration of the cure period specified in MTC's written notice of such default, MTC may, in its discretion, terminate by written notice to Contractor terminating the Contract or such portion thereof that the MTC Project Manager deems is affected by the default.

Upon MTC's termination of the Contract or a portion thereof under this Article, MTC shall have the right to complete the Work or the portion terminated by whatever means and methods it deems expedient, including the hiring of others on such terms as MTC deems advisable. The expense of completing such Work or portion thereof shall be charged to the Contractor, in accordance with applicable law. The expense so charged may be deducted by MTC out of such monies as may be due or become due to Contractor, in accordance with applicable law. MTC may withhold all or any part of any payments otherwise due Contractor until completion and final settlement of the Work covered by such notice of default. If Contractor cures the material default within the cure period, but subsequently materially defaults again, MTC may immediately terminate the Contract or a portion of it without giving Contractor any further notice or a right to cure.

14.4 ACTIONS TAKEN FOLLOWING TERMINATION

Immediately upon receipt of a notice of termination, the Contractor shall (a) stop work under the Contract on the date and to the extent specified in said notice; (b) terminate, unless otherwise directed by the MTC Project Manager, all orders and subcontracts to the extent that they relate to the performance of work terminated and place no further orders or subcontracts for materials, services or facilities, except as may be necessary for the completion of such portion of the work under the Contract as is not terminated; (c) if directed by the MTC Project Manager, assign to MTC all of the right, title and interest of the Contractor under any orders and subcontracts; (d) if directed by the MTC Project Manager, transfer title and deliver to MTC (i) work in progress, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the Notice of Termination; and (ii) the completed or partially completed plans, drawings, manuals, information and other property which, if the Contract had been completed, would have been required to be furnished to MTC; and (e) complete performance of such part of the work as shall not have been terminated by said notice.

Contractor shall be compensated for reasonable costs and profits of termination under Article 14.1 and 14.2 in accordance with the terms of Article 11.

15. MISCELLANEOUS PROVISIONS

15.1 INDEPENDENT CONTRACTOR

The relationship of MTC and Contractor is that of independent contractor. Contractor, in accordance with its status as an independent contractor, covenants and agrees that Contractor will conduct itself in a manner consistent with such status, and that Contractor will neither conduct itself as nor claim to be an officer or employee of MTC by reason hereof. Contractor will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of MTC, including, but not limited to, worker's compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit. No employee of Contractor or any Subcontractor is or shall be deemed to be an officer or employee of MTC. Except as otherwise specified in the Contract, Contractor has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other persons that Contractor or any Subcontractor hires to perform or assist in performing the Work.

15.2 SUCCESSORS AND ASSIGNS

The Contract shall be binding upon and inure to the benefit of MTC and Contractor and their permitted successors, assigns and legal representatives.

15.3 REPRESENTATIVES

MTC and Contractor shall each designate an individual or individuals who shall be authorized to make decisions and bind the parties on matters relating to the Contract. MTC may change its designated individual by a subsequent writing delivered to the other party; substitution by Contractor of its Project representative requires to prior approval of MTC.

15.4 SURVIVAL

All provisions that by their inherent character should survive termination of this Contract shall survive the termination of this Contract.

15.5 LIMITATION ON THIRD PARTY BENEFICIARIES

The parties to this Contract do not intend by any of the provisions of this Contract to cause the public or any member thereof to be a third party beneficiary hereunder, or to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract.

It is the further intent of MTC and Contractor in executing this Contract that no individual, firm, corporation or any combination thereof, which supplies materials, labor, software, services or equipment to Contractor for the performance of the Work shall become thereby a third party beneficiary of this Contract. MTC and Contractor understand that by virtue of this lack of standing, no such individual, firm, corporation or combination thereof, has any right to bring an action against MTC pursuant to or to enforce any of the provisions of this Contract.

15.6 ASSIGNMENT

The parties shall not assign or delegate all or any part of their obligations under the Contract to any other person(s), without the prior written approval of MTC, except that Contractor may assign monies due or to become due under the Contract and such assignment will be recognized by MTC, if given proper notice thereof, to the extent permitted by law, but any assignment of monies shall be subject to all proper set-offs in favor of MTC and to all deductions provided for in the Contract. Contractor's assignment or delegation of any of its Work under the Contract, authorized or unauthorized, shall be ineffective to relieve Contractor of its responsibility for the Work assigned or delegated, unless MTC, in its sole discretion, has approved such relief from responsibility in writing.

15.7 LANGUAGE

All specifications, manuals and other documents to be prepared under the Contract shall be written in the English Language.

15.8 ENTIRE AGREEMENT

The Contract, including all documents and specifications incorporated therein by reference, constitute the entire agreement between MTC and the Contractor with respect to their rights, responsibilities and obligations under the Contract, and supersede any prior oral or written agreements, understandings and commitments.

15.9 MODIFICATIONS

Any waiver, modification or amendment of any provisions of any of the Contract shall be effective only if in writing, signed by authorized representatives of both MTC and Contractor, that specifically references this Contract. No waiver, modification or amendment of any provisions of the Contract that is made orally shall be effective for any purpose unless it is documented by a writing delivered by one party to the other party within two working days and thereafter signed by authorized representatives of both MTC and the Contractor.

15.10 SEVERABILITY

Whenever possible, each provision of the Contract shall be interpreted in a manner as to be effective and valid under applicable law. However, if any provision, or part of any provision, should be prohibited or invalid under applicable law, such provision, or part of such provision, shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of the Contract.

15.11 GOVERNING LAW AND CHOICE OF FORUM

The Contract, and the relationship of MTC and Contractor arising out of or relating to the Contract, shall be governed by and construed in accordance with the laws of the State of California that would apply to contracts made and performed entirely within the State of California by parties located entirely within the State of California. Suit to resolve any dispute arising out of or relating to the Contract or to the relationship between MTC and the Contractor, shall be filed in the United States District Court for the Northern District of California, unless subject matter jurisdiction is lacking, in which case suit shall be filed in the Superior Court of the State of California in and for the County of Alameda.

15.12 SECTION HEADINGS

Section headings in this Contract are not intended to have any substantive meaning and shall not be considered relevant to the interpretation of the terms and conditions of the Contract.

IN WITNESS WHEREOF, MTC and Contractor have executed this Contract, as of the date first written above.

METROPOLITAN TRANSPORTATION
COMMISSION

Steve Heminger, Executive Director

ATTACHMENT 1, DESIGNATED REPRESENTATIVES

CONTRACTOR:

Principal in Charge:

Project Manager:

MTC:

Project Manager: Carol Kuester
Metropolitan Transportation Commission
101 Eighth Street
Oakland, CA 94607-4700
510-817-5853
ckuester@mtc.ca.gov

ATTACHMENT 2, Key Personnel

Year 1: Hours stated in Contractor's final proposal from the contract-bidding process

Year 2-5: Hours in Approved Annual Work Plan

	<u>Name</u>	<u>Rate/hour (for Time & Materials Task Orders only)</u>	<u>Est. hours for Years 1-5</u>	<u>Task Description</u>
1.		\$xx	Year 1: Year 2: Year 3: Year 4: Year 5:	Project Manager
2.				Traffic Data Collection Lead
3.				Traffic Data Processing Lead
4.				Traveler Information Center (TIC) Operations Manager
5.				Website Services Lead
6.				511 Phone System Lead
7.				Real-Time Transit Data Collection and Processing Lead
8.				Lead Engineer

Note: Contractor must have prior written approval from MTC before changing key personnel's hours by +/- 10%

Other Personnel – Hourly Rates

	<u>Job Classification</u>	<u>Rate/hour (for Time & Materials Task Orders only)</u>
1.		\$xx
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Attachment 3, Project Schedule

This Attachment will show the first year project schedule once it is finalized. It will be based on the Contractor's proposal.

Attachment 4, Payment Schedule for Project Elements I - IV



Attachment 5, Subcontractors

	<u>Name/Address of subconsultant</u>	<u>Amount of Subcontract</u> <u>(if over</u> <u>\$100,000)</u>	<u>Description of Work</u>
1.			
2.			
3.			
4.			
5.			
6.			

Attachment 6, Local Agency Proposer/Bidder DBE (Consultant Contracts) Information

This information shall be provided by the successful Proposer/Bidder with the award document.				
Preliminary Engr.		Studies	Environmental Document	Prelim Design
Final Design Right of Way		Right of Way Engineering	Right of Way Utility Relocation	
Construction		Construction Engineering	Construction Management	
AGENCY: MTC		LOCATION: 101 EIGHTH ST, OAKLAND, CA 94607		
PROJECT DESCRIPTION: Traveler Information				
CONTRACT NUMBER: _____				
FEDERAL-AID PROJECT NUMBER:		20.205		
TOTAL CONTRACT AMOUNT:		\$4,853,185		
FEDERAL SHARE (For local agency to complete):		\$4,296,524		
PROPOSAL/BID DATE:		July 1, 2008		
PROPOSER'S/BIDDER'S NAME:		Telvent Farradyne		
CONTRACT ITEM NO.	ITEM OF WORK AND DESCRIPTION OR SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED ²	DBE Cert. No. AND EXPIRATION DATE	NAME OF DBEs ¹ (Must be certified on the date bids are opened - include DBE address and phone number)	DOLLAR AMOUNT DBE
Subtask 4.5	System Maintenance	CUCP 30290	Z Cubed	\$120,000
			268 Bush Street, PMB 4422	
			San Francisco, CA 94194	
			415-333-8029	
<p>IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Copies of the DBE quotes are helpful. Names of the First-Tier DBE Subcontractors and their respective item(s) of work listed above should be consistent with the names and items of work in the "List of Subcontractors" submitted with your bid pursuant to the Subcontractors Listing Law and the Special Provisions.</p> <p>1. Enter DBE prime and subcontractors certification number. Prime contractors shall indicate all work to be performed by DBEs including work performed by its own DBE forces.</p> <p>2. If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished by DBE.</p>			Total Claimed Participation	\$120,000
			2.45%	
			<p>Signature of Proposer/Bidder _____</p> <p>Date _____ (Area Code) Tel. No. _____</p> <p>Person to Contact _____ (Please Type or Print)</p>	

CT Bidder - DBE Information (Rev 4/28/06)

Distribution: (1) Copy - Fax immediately to the Caltrans District Local Assistance Engineer (DLAE) upon award.
(2) Copy - Include in award package to Caltrans District Local Assistance
(3) Original - Local agency files